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**Order 97-2-20**

**Served: February 28, 1997**



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 24th day of February, 1997

**U.S.-BRAZIL ALL-CARGO FREQUENCY  
ALLOCATION PROCEEDING**

**Docket OST-96-2022**

**ORDER ALLOCATING FREQUENCIES**

**Summary**

By this order, we allocate the 7.5 additional all-cargo wide-body frequencies available for U.S. carrier services as follows: Federal Express Corporation (Federal Express)-5; Polar Air Cargo, Inc. (Polar)-2; and Challenge Air Cargo, Inc. (Challenge)-0.5.<sup>1</sup> This order also grants the request of Challenge for clarification of the Department's Notice dated December 19, 1996, with respect to the number of frequencies that are available for allocation in this proceeding.

**Background**

By Notice served December 19, 1996, we invited the four designated U.S. carriers (Federal Express, Challenge, Polar, and American International Airways, Inc. (AIA)), providing all-cargo services in the U.S.-Brazil market to file their applications for allocation of additional all-cargo frequencies.<sup>2</sup> We determined that a total of 8.5 additional weekly frequencies were available for allocation--6 of these being the new frequencies available April 1, 1997 (as set forth in the October 24, 1996 Memorandum of Consultations between the United States and Brazil), and 2.5

<sup>1</sup> For all-cargo services the number of flights are expressed as units representing wide-body freighters. One or more freighters may be substituted by narrow-body freighters in a ratio of two (2) narrow-body frequencies equal one (1) wide-body frequency.

<sup>2</sup> Currently, U.S. carriers may operate a total of 18 all-cargo wide-body frequencies between the United States and Brazil. Those frequencies have been previously allocated as follows: Federal Express-5; Challenge-3.5; American International Airlines, Inc. (AIA)-6.5; and Polar-3.

being frequencies previously allocated to Challenge, but now dormant, and, thus, available for reallocation.

### **Applications**

Federal Express, Challenge, and Polar filed applications in response to our notice.

Federal Express initially requested 6 additional frequencies for U.S.-Brazil all-cargo services. However, following the submission of the Challenge pleading described below, the carrier amended its application to reduce the number of requested frequencies to <sup>3</sup>5. Federal Express proposes to use the frequencies for expansion of its Miami-Sao Paulo and Miami-Santiago-Sao Paulo services. The carrier would operate these services using DC-10-30 freighters, connecting at Sao Paulo with B-727-200 aircraft for certain flights beyond Brazil to Buenos Aires. Federal Express requests the allocations for a two-year period, and states that it can begin using the frequencies within 30 days of allocation<sup>4</sup>.

Challenge requests 0.5 additional frequency for U.S.-Brazil all-cargo services. The carrier proposes to use the allocation to operate one additional weekly flight with narrow-body (B-757) aircraft in the Miami-Manaus/Sao Paulo market beginning in April 1997. In its application, Challenge also requests clarification of the Department's Notice dated December 19, 1996, with respect to the total number of frequencies that are available for allocation at this time. Challenge maintains that only 1.5 of its previously-allocated frequencies are dormant instead of 2.5 as cited by the Department in its Notice. Challenge explains that the discrepancy between the Department's statistics and Challenge's data in this matter is attributable to a reporting error of Challenge's whereby Challenge inadvertently failed to report a number of U.S.-Brazil scheduled all-cargo flights operated by third-party wet lessors.

Polar requests 2 additional frequencies for U.S.-Brazil all-cargo services. The carrier proposes to use the frequencies for expansion of its Miami-Manaus and Miami-Rio de Janeiro services. Polar would operate these services with B-747 freighter aircraft beginning April 1, 1997.

### **Responsive Pleadings**

Federal Express and Polar filed answers to the applications, and AIA filed a reply to the answer of Federal Express.

In its answer, Federal Express states that, because it has voluntarily reduced to 5 the number of frequencies it requests for U.S.-Brazil all-cargo service, the total number of frequencies requested in this proceeding is equal to the number of weekly frequencies available for allocation and, thus, there is no need for comparative carrier selection to allocate the frequencies. Federal Express requests that, in recognition of its historic interest in the U.S.-Brazil market and its voluntary willingness to reduce its requested allocation in this proceeding to avoid an expensive

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<sup>3</sup> Federal Express accompanied its amendment with a motion for leave to file after the date for answers in this proceeding. We will grant the motion.

<sup>4</sup> Federal Express projects that these new services will require use of 15.6 million gallons of fuel.

and time-consuming carrier selection case, it be granted first priority with respect to reallocation of one additional Brazil frequency, when and if such a frequency becomes available.

AIA objects to Federal Express' request for first priority in any subsequent allocations of Brazil all-cargo frequencies. AIA argues that it is not in a position now to ask for additional U.S.-Brazil frequencies but that, in the foreseeable future, it will likely want to apply for such frequencies, if and when they become available. AIA states that it would be inappropriate for the Department to confer priority to any one carrier under the circumstances here, and urges the Department to disregard Federal Express's request.

Polar's answer addresses comparative selection issues which no longer need to be addressed in this proceeding in light of Federal Express's amended application.

### **Decision**

After careful consideration of all the pleadings in this case, we have decided to: (1) grant Challenge's request for clarification on frequency availability and determine that 7.5 instead of 8.5 frequencies are available for reallocation at this time; and (2) allocate to the carriers the number of frequencies they each requested in their respective applications. We will not, however, grant Federal Express' request for first-priority with respect to future allocation of an additional frequency.

#### **a. Number of Frequencies Available for Allocation**

In our Notice soliciting applications for allocation of additional frequencies, we determined that a total of 8.5 additional weekly frequencies were available for allocation--6 of these being the new frequencies available April 1, 1997, and 2.5 being frequencies previously allocated to Challenge, but now dormant, and, thus, available for reallocation. Challenge has stated that, due to a reporting error, it failed to report a number of frequencies operated and that it is, indeed, using 2 of its previously allocated 3.5 wide-body frequencies in the market. No party objected to Challenge's statements regarding the number of frequencies it has actually operated in the market.

We have carefully considered the information presented by Challenge and the fact that no party disputes the level of services it claims to have operated, and we have decided to modify the total number of U.S.-Brazil all-cargo frequencies available for reallocation at this time. Accordingly, we determine that 1.5 frequencies previously allocated to Challenge are now dormant and available for reallocation and immediate use, and 6 new frequencies are available April 1, 1997, for a total of 7.5 weekly wide-body all-cargo frequencies.

#### **b. Allocation of Frequencies**

The requests of the U.S. carrier applicants for U.S.-Brazil all-cargo frequency allocations do not exceed the total number of allocations available. Therefore, we have decided to proceed directly to final order in this matter and to allocate the 7.5 available frequencies to the carriers as requested. Specifically, the allocations are as follows: Federal Express-5, Polar-2, and Challenge-0.5. Because Federal Express was the only applicant to indicate that it could begin

using the new frequencies prior to April 1997, we have decided to reallocate to Federal Express the 1.5 dormant frequencies previously held by Challenge. These frequencies are available for immediate use. The remaining new frequencies allocated by this order to Federal Express (3.5), to Polar (2) and to Challenge (0.5) will be effective immediately for operations beginning April 1, 1997, as provided for under the U.S.-Brazil Memorandum of Consultations signed October 24, 1996.

c. Duration of Allocations and Dormancy Conditions

In its application, Federal Express requests that the new frequency allocations be effective for a two-year period. Challenge and Polar do not specifically address the duration issue. We have decided to grant the applications for a two-year period. All of the carriers granted additional frequencies are currently serving the U.S.-Brazil market and seek only to expand these services. In these circumstances, and in view of the fact that the allocations will be subject to our standard dormancy conditions (see below) which will ensure that the flights are not wasted, we believe that it is in the public interest to make the allocations effective for a period of two years.

Consistent with our standard practice, the frequency allocations granted by this order will be subject to dormancy conditions such that if any frequency is not used for a period of ninety days, that frequency will revert to the Department for reallocation.<sup>5</sup> Also, consistent with our policy in these matters, the dormancy period for 1.5 of the frequencies allocated to Federal Express will begin 30 days from the service date of this order, the carrier's projected date for commencing additional services in the market. The dormancy period for all other frequencies granted in this order begins April 1, 1997, the date the new frequencies become available under the aviation agreement and on which the carriers propose to commence their additional services.

d. Request for First Priority Reallocation Status

Federal Express requests that it be granted first priority with respect to reallocation of one additional Brazil frequency, when and if such a frequency becomes available, in recognition of its interest in the U.S.-Brazil market and its voluntary willingness to reduce its requested allocation in this proceeding. We have decided to deny Federal Express's request. It is, and always has been, our policy to examine awards in a limited-entry situation on a case-by-case basis. Federal Express has presented no persuasive reason for us to deviate from that policy here. Should an additional frequency or frequencies become available, Federal Express, of course, may apply for allocation of such additional frequency(ies). Its proposal, however, will be considered, without any pre-determined advantage, along with any other proposals before us at that time.

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<sup>5</sup> We note that the current allocations held by the four carriers authorized to serve the Brazil scheduled all-cargo market have different expiration dates. For administrative purposes, we request that when the carriers seek renewal of those allocations that they seek a common expiration date for their total allocations.

<sup>6</sup> Carriers should notify the Director, Office of International Aviation, by letter of dormant frequencies and should serve that letter on the other U.S. all-cargo carriers authorized to provide scheduled all-cargo services in the U.S.-Brazil market.

**ACCORDINGLY,**

1. We determine that 7.5 weekly wide-body all-cargo frequencies are available for allocation in this proceeding;
2. We allocate to Federal Express Corporation 5 weekly wide-body frequencies to conduct U.S.-Brazil all-cargo services<sup>7</sup>;
3. We allocate to Polar Air Cargo, Inc., 2 weekly wide-body frequencies to conduct U.S.-Brazil all-cargo services;
4. We allocate to Challenge Air Cargo, Inc., 0.5 weekly wide-body frequencies to conduct U.S.-Brazil all-cargo services;
5. The frequency allocations granted in ordering paragraphs 2-4, above, are effective immediately (as conditioned below), and will remain in effect for a period of two years from the service date of this order;
6. Of the 5 weekly wide-body frequencies allocated to Federal Express Corporation in ordering paragraph 2, above, 1.5 of those frequencies are available for immediate use; the remaining 3.5 frequencies allocated to Federal Express Corporation in ordering paragraph 2, above, are available for use April 1, 1997;
7. The 2 weekly wide-body frequencies allocated to Polar Air Cargo, Inc., in ordering paragraph 3, above, and the 0.5 weekly frequency allocated to Challenge Air Cargo, Inc., in ordering paragraph 4, above, are available for use April 1, 1997;
8. The frequencies allocated here are subject to a 90-day dormancy condition wherein frequencies not used by a carrier for any 90-day period will automatically expire and will revert back to the Department for reallocation;
9. The 90-day dormancy period for 1.5 of the frequencies allocated to Federal Express Corporation in ordering paragraph 2, above, will begin 30 days from the service date of this order; the 90-day dormancy period for all remaining frequencies allocated in ordering paragraphs 2, 3, and 4, above, will begin April 1, 1997;
10. We grant the motion of Federal Express Corporation for leave to file an amended application in Docket OST-96-2022;
11. We deny the request of Federal Express Corporation for first-priority status on reallocation of one U.S.-Brazil all-cargo frequency, when one becomes available;

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<sup>7</sup> Federal Express has forecast that the proposed additional services to Brazil will consume approximately 15.6 million gallons of fuel annually. We find, however, that the additional service to be provided under this authority and the resulting public benefits outweigh any adverse effects that may be caused by the increased fuel consumption.

12. To the extent not granted or denied, we deny all motions and requests in this docket; and

13. We will serve this order on American International Airways, Inc.; Challenge Air Cargo, Inc.; Federal Express Corporation; Polar Air Cargo, Inc.; the Ambassador of Brazil in Washington, D.C.; the Federal Aviation Administration; and the U.S. Department of State (Office of Aviation Negotiations).

BY:

**CHARLES A. HUNNICUTT**  
**Assistant Secretary for Aviation**  
**and International Affairs**

(SEAL)